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Letter dated 9 February 2018 from the Secretary-General addressed to the President of the Security Council

I have the honour to refer to Security Council resolution 2379 (2017) of 21 September 2017, in which the Council requested that I establish an investigative team, headed by a special adviser, to support domestic efforts to hold Islamic State in Iraq and the Levant (ISIL), also known as Da'esh, accountable by collecting, preserving and storing evidence in Iraq of acts that may amount to war crimes, crimes against humanity or genocide committed by the terrorist group ISIL (Da'esh) in Iraq.

The Security Council also requested that I submit to the Council, for its approval, within 60 days, terms of reference that are acceptable to the Government of Iraq, in order to ensure that the Investigative Team can fulfil its mandate, and that are consistent with the resolution, regarding the operation of the Team in Iraq. The time frame for the submission of the terms of reference was extended to 9 February 2018 in a letter dated 24 January 2018 from the President of the Security Council addressed to me (S/2018/64).

Since the adoption of Security Council resolution 2379 (2017), the Secretariat has expended its best efforts to prepare and finalize terms of reference for the Investigative Team that are acceptable to the Government of Iraq.

On 8 February 2018, I received a note verbale from the Permanent Mission of Iraq informing me that the Government of Iraq has accepted the terms of reference for the Investigative Team.

I thus have the honour to submit to the Security Council, for its approval, the attached terms of reference for the Investigative Team (see annex).

Following the approval of the terms of reference by the Security Council, I will expeditiously appoint a special adviser as head of the Investigative Team, upon consultation with the Government of Iraq. I will also undertake without delay the steps, measures and arrangements necessary for the speedy establishment and full functioning of the Team.

I believe that these terms of reference will allow the Investigative Team to fulfil its important mandate in accordance with United Nations policies and best practice. In this regard, I intend to follow the work of the Team closely.

I wish to thank the Member States who have assisted the United Nations in reaching a positive outcome.

I should be grateful if you would bring the present letter and its annex to the attention of the members of the Security Council.

(*Signed*) António **Guterres**

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Annex

Terms of reference of the Investigative Team to support domestic efforts to hold Islamic State in Iraq and the Levant (Da'esh) accountable for acts that may amount to war crimes, crimes against humanity and genocide committed in Iraq, established pursuant to Security Council resolution 2379 (2017)

1. The Investigative Team established by the Secretary-General pursuant to Security Council resolution 2379 (2017) of 21 September 2017 shall act consistently with the following terms of reference, which have been developed in accordance with operative paragraph 4 of resolution 2379 (2017).

I. Mandate

2. The Investigative Team shall support domestic efforts to hold the terrorist group Islamic State in Iraq and the Levant (ISIL), also known as Da'esh, accountable by collecting, preserving and storing evidence in Iraq of acts that may amount to war crimes, crimes against humanity and genocide committed by ISIL (Da'esh) in Iraq, to the highest possible standards, to ensure the broadest possible use before national courts, and complementing investigations being carried out by the Iraqi authorities or investigations carried out by authorities in third countries at their request.

3. The Investigative Team shall be impartial, independent and credible and shall act consistently with these terms of reference, the Charter of the United Nations, United Nations best practices and relevant international law, including international human rights law.

4. The Investigative Team shall operate with full respect for the sovereignty of Iraq and its jurisdiction over crimes committed in its territory.

Collection

5. The Investigative Team shall collect evidence pertaining to acts that may amount to war crimes, crimes against humanity and genocide committed by ISIL (Da'esh) in Iraq, including by conducting interviews, taking witness testimony, receiving information and documentation and acquiring forensic material.

6. The Investigative Team shall assess the evidence and materials in its possession, based on their reliability and probative value. It shall identify gaps in the evidence in its possession and the need for additional evidence and take steps, where possible and appropriate, to fill such gaps.

Preservation and storage

7. The Investigative Team shall systematically organize, catalogue, record, preserve and store all evidence and materials in Iraq, in accordance with international criminal law standards and taking into account Iraqi criminal and procedure laws, in order to ensure their broadest possible usability and admissibility in fair and independent criminal proceedings, consistent with applicable international law, conducted by competent domestic courts in Iraq and other States, and in any other uses to be determined in agreement with the Government of Iraq on a case-by-case basis.

8. The Investigative Team shall ensure an uninterrupted chain of custody of the evidence in its possession.

9. The Investigative Team shall be equipped with, or have at its disposal, the necessary capacities to analyse, preserve and store all forms of evidence and materials in Iraq. To this end, it may enter into agreements with Member States, bodies, organizations or corporations in order to gain access to safe, secure and reputable services and facilities which can support it in these tasks, with all due guarantees of security and strict confidentiality and respect for the privileges and immunities of the United Nations. The coordinating or steering committee, which will be designated by the Government of Iraq to ensure effective coordination between the Investigative Team and the Government of Iraq, will be duly informed before the implementation of the above-mentioned agreements.

10. Upon conclusion of the Investigative Team's mandate, the United Nations and the Government of Iraq shall agree upon arrangements regarding the custody of original versions of the evidence and materials collected, preserved and stored by the Investigative Team in Iraq, as well as any materials and analyses produced by the Investigative Team.

II. Structure and composition

Head of the Investigative Team

11. The Investigative Team shall be headed by a Special Adviser. The Special Adviser shall be a person of high moral character and integrity and shall possess the highest level of professional competence and extensive experience in the conduct of investigations and prosecution of criminal cases. The Special Adviser shall have a proven record of independence and impartiality and be committed to upholding justice, accountability and human rights and ensuring gender equality. The Special Adviser shall be appointed by the Secretary-General, upon consultation with the Government of Iraq, for an initial period of two years, which shall be renewable.

12. The Special Adviser shall develop, adopt and periodically review and update a strategy for the conduct of investigations, determine the work plan of the Investigative Team and put in place procedures relating to the conduct of its work.

13. In addition to leading the Investigative Team, the Special Adviser will, while avoiding duplication of effort with other relevant United Nations bodies, promote throughout the world accountability for acts that may amount to war crimes, crimes against humanity and genocide committed by ISIL (Da'esh) and work with survivors, in a manner consistent with relevant national laws, to ensure that their interests in achieving accountability for ISIL (Da'esh) are fully recognized.

Composition of the Investigative Team

14. The Investigative Team will be composed of international experts and Iraqi investigative judges and other criminal experts, including experienced members of the prosecution services, who will work on an equal footing, under the authority of the Special Adviser.

15. Members of the Investigative Team shall be impartial and experienced professionals, with expertise in the following areas, inter alia: international criminal law; human rights law; international humanitarian law; Iraqi criminal law and procedure; criminal investigations and prosecution; the storage and preservation of evidence for use in criminal proceedings; military affairs; forensics, including, notably, with respect to mass graves, digital forensics, forensic pathology and forensic imagery; witness and victim protection; sexual and gender-based crimes and violence; the rights of women and children; crimes against children; trafficking in persons; and the protection of cultural heritage.

16. All members of the Investigative Team will be appointed by the Special Adviser. Iraqi investigative judges and other criminal experts will be appointed by the Special Adviser in consultation with the Government of Iraq.

17. In appointing members of the Investigative Team, due consideration shall be given to geographic diversity, representation of different legal traditions, gender balance, language skills, in particular in Arabic, and regional expertise.

18. The Special Adviser and all members of the Investigative Team shall exercise their mandate and discharge their functions in full independence and with the utmost impartiality and shall not seek or accept instructions in regard to the performance of their functions from any government or any external source. They shall maintain the highest standards of efficiency, competence and integrity in the discharge of their functions.

III. Standards and procedural requirements for the collection, preservation and storage of evidence

19. The Investigative Team shall adopt procedures for collecting, preserving and storing evidence and materials in Iraq. These procedures shall be based on the highest possible standards, consistent with the Charter of the United Nations, United Nations policies and best practice, relevant international law, including international human rights law, notably the right to a fair trial and other due process provisions, as well as the relevant jurisprudence, in order to ensure the broadest possible usability and admissibility of such evidence and materials before national courts and by national investigative and prosecutorial authorities. In adopting such procedures, the Investigative Team shall take into account Iraqi criminal and procedure laws, bearing in mind that the competent Iraqi authorities shall be the primary intended recipient of the evidence collected, preserved and stored by the Investigative Team.

20. The Investigative Team shall seek to obtain from witnesses and other sources their informed consent for the Investigative Team to share evidence with Iraqi and other domestic investigative, prosecutorial and judicial authorities, and with any other competent authorities as determined in agreement with the Government of Iraq. The consent, or lack thereof, must be duly recorded by the Investigative Team. This is without prejudice to the competencies of the Iraqi and other domestic investigative, prosecutorial and judicial authorities to obtain evidence according to applicable domestic laws.

21. The Investigative Team shall take appropriate measures to respect and ensure respect for the privacy, interests and personal circumstances of victims, in the light of their age, sex, sexual orientation, gender and health, and taking into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children.

22. The Investigative Team shall adopt procedures and methods of work for the protection of victims and witnesses, with the support of Iraq and other States, so as to ensure that witnesses, victims and any other persons who cooperate with the Investigative Team can do so in safety and security.

23. The Investigative Team shall assist in referring vulnerable victims, in particular children, women and victims of conflict-related sexual violence, who come forward to the Investigative Team, to the relevant bodies so that they are provided with appropriate support.

24. The Investigative Team shall determine and record the confidentiality classification of all evidence obtained or produced by the Investigative Team,

including its work products and analyses, in line with the United Nations policies on information sensitivity, classification and handling.

25. The Investigative Team shall adopt procedures and methods of work regarding chains of custody, data protection, information management, case management and archiving and security, which shall conform to the highest possible standards.

IV. Use of evidence

26. Subject to paragraph 30, the evidence collected, preserved and stored by the Investigative Team, as well as any materials and analyses produced by the Investigative Team, shall solely be for use in fair and independent criminal proceedings conducted by competent domestic courts in Iraq and in third States.

27. The competent Iraqi authorities shall be the primary intended recipient of the evidence collected, preserved and stored by the Investigative Team. In carrying out its functions, the Investigative Team will act with full respect for the Iraqi Constitution and Iraqi relevant laws and Iraq's right to exercise jurisdiction over crimes committed on its territory, including in ongoing proceedings. To this end, the Investigative Team shall share the evidence with the competent Iraqi authorities in accordance with the present terms of reference and with the modalities to be agreed pursuant to paragraph 45.

28. The Investigative Team shall share the evidence in accordance with United Nations policies and best practice and relevant international law, including international human rights law, rules and standards.

29. In sharing evidence, the Investigative Team shall bear in mind, as set out in Security Council resolution 2379 (2017), the importance of assisting Iraq and other States in holding ISIL (Da'esh) members accountable, in particular those who bear the greatest responsibility, including in terms of leadership, which can include regional or mid-level commanders, in order to assist in countering terrorism, including by stemming financing and the continued flow of international recruits to ISIL (Da'esh).

30. When sharing evidence with a competent State authority, the Investigative Team shall, among other procedures, provide, to the extent possible and as appropriate, certified copies of the original evidence. All original evidence shared by the Investigative Team shall be duly returned, in its original state, to the Investigative Team as soon as possible. The Investigative Team shall also obtain an assurance from the competent State authority that the evidence will not be disclosed by the competent State authority to any authority of another State. The Investigative Team shall inform the Government of Iraq in the event that it shares evidence collected by the Investigative Team with the authorities of third States.

31. Any other use of the evidence collected, preserved and stored by the Investigative Team will be determined by the Investigative Team in agreement with the Government of Iraq on a case-by-case basis.

V. Cooperation

32. The Investigative Team shall have the authority to conclude agreements with any State or entity for the implementation of its mandate.

33. The Investigative Team shall develop, in its procedures and methods of work, modalities for cooperation with States and other organizations and entities.

34. The Investigative Team will cooperate with all States, including through mutual arrangements on legal assistance, where necessary and appropriate, and in particular to receive from States any relevant information that States may possess pertaining to the Investigative Team's mandate.

35. The Investigative Team may receive funds, equipment and services, including expert personnel, from States and regional and intergovernmental organizations in support of the implementation of its mandate.

36. The United Nations and all its programmes, funds and offices shall, within their respective mandates, fully cooperate with the Investigative Team and promptly respond to its requests, including for access to information.

37. The Investigative Team shall cooperate, as appropriate, and consistent with its investigative functions as set out above, with the Analytical Support and Sanctions Monitoring Team established pursuant to Security Council resolutions 1526 (2004) and 2368 (2017) and with any other relevant monitoring bodies and work with other United Nations bodies within their respective mandates, while avoiding any duplication of efforts.

38. The Investigative Team will cooperate with relevant intergovernmental and regional organizations, as well as non-governmental organizations, as appropriate and necessary for the implementation of its mandate.

VI. Capacity-building

39. The Investigative Team will liaise with States and regional and intergovernmental organizations for the provision of appropriate legal assistance and capacity-building to the Government of Iraq in order to strengthen its courts and judicial system. The Investigative Team will encourage States and regional and intergovernmental organizations to provide funds, equipment and services to the Investigative Team, to share knowledge and technical assistance with Iraq and to help build capacity in investigations, prosecutions and the judiciary in Iraq.

40. The Special Adviser and the international members of the Investigative Team shall ensure that its Iraqi members benefit from the expertise on the Investigative Team, and make every effort to share knowledge and technical assistance with Iraq.

41. The Investigative Team will cooperate with other United Nations bodies, programmes, funds and offices, within their respective mandates, to assist the Government of Iraq in developing and implementing relevant legislation, including on war crimes, crimes against humanity and genocide.

VII. Location and premises

42. The Secretary-General, after consultation with the Government of Iraq, will determine the location of the offices of the Investigative Team, taking into account security, costs, the location of crime sites and any other relevant considerations.

VIII. Privileges and immunities

43. The Investigative Team, its personnel, records, archives, property and assets shall enjoy the privileges and immunities, exemptions and facilities provided for in the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

IX. Cooperation with the Government of Iraq

44. The Investigative Team shall liaise with the coordinating or steering committee, which will be designated by the Government of Iraq to ensure that the Investigative Team is free from interference in the conduct of its work and provide it with all necessary assistance to fulfil its mandate and effective coordination between the Investigative Team and the Government of Iraq, particularly with respect to the implementation by the competent Iraqi authorities of the following:

(a) Freedom of movement throughout the territory of Iraq;

(b) Unhindered access to all places and establishments, and freedom to meet and interview representatives of national, local and military authorities, community leaders, non-governmental organizations and other institutions, and any person who may have evidence that is considered necessary for the fulfilment of the mandate, in an environment of security, confidentiality and tranquillity;

(c) Unhindered access for individuals and organizations wishing to meet the Investigative Team;

(d) Free access to all sources of information, including documentary material and physical evidence;

(e) Appropriate security arrangements for the personnel and documents of the Investigative Team, without restricting its freedom of movement and its investigations;

(f) Protection of victims and witnesses and all those who come into contact with the Investigative Team, and an undertaking that no such person shall, as a result of such contact, suffer harassment, threats, acts of intimidation, ill-treatment or reprisals.

45. The Investigative Team shall liaise with the coordinating or steering committee and/or competent Iraqi authorities on modalities for the eventual use, in fair and independent criminal proceedings, of evidence of crimes collected and stored by the Team in Iraq, in accordance with the present terms of reference.

X. Reporting

46. The Special Adviser shall submit to the Security Council the first report on the Investigative Team's activities within 90 days of the date on which it commences its activities, as notified by the Secretary-General, and shall present subsequent reports every 180 days thereafter, while preserving the confidential nature of its substantive work. These reports shall be in accordance with these terms of reference, in line with the mandate of the Investigative Team, with full respect for the sovereignty of Iraq and in accordance with the principles of the Charter of the United Nations.

47. The Special Adviser may, at any time, report to the Security Council any significant issue that arises in the implementation of the mandate.

XI. Funding

48. The Investigative Team shall be funded through assessed contributions.

49. Additional funding will be provided to the Investigative Team through the trust fund established by the Secretary-General pursuant to paragraph 13 of Security Council resolution 2379 (2017).

XII. Requests from third States to conduct investigations outside Iraq

50. In the event that the Investigative Team receives a request from a third State, in whose territory ISIL (Da'esh) has committed acts that may amount to war crimes, crimes against humanity and genocide, to collect evidence of such acts in its territory, the Special Adviser shall inform the Security Council of the request as expeditiously as possible.

XIII. Renewal of mandate

51. The mandate of the Investigative Team will be reviewed after a period of two years, and any further extension shall be decided at the request of the Government of Iraq or any other government that has requested the Team to collect evidence of acts that may amount to war crimes, crimes against humanity and genocide committed by ISIL (Da'esh) in its territory.